

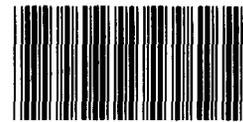
GAO

Report to the Chairman, Subcommittee  
on Crime and Criminal Justice,  
Committee on the Judiciary, House of  
Representatives

November 1992

# OFFICE OF JUSTICE PROGRAMS

## Discretionary Grants Reauthorization



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**General Government Division**

B-251148.1

November 20, 1992

The Honorable Charles E. Schumer  
Chairman, Subcommittee on Crime  
and Criminal Justice  
Committee on the Judiciary  
House of Representatives

Dear Mr. Chairman:

Between 1987 and 1991, approximately \$500 million was disbursed through the discretionary grants programs of the bureaus of the Office of Justice Programs (OJP), Department of Justice. These grants supported public and private anticrime and antidrug research and demonstration efforts. With the reauthorization of the OJP and its program bureaus under consideration, concerns have been raised about how effectively the discretionary grants programs are being administered.

As part of the reauthorization effort, you asked us to review certain aspects of the discretionary grants programs of four of the five OJP program bureaus, the Bureau of Justice Assistance (BJA), the Bureau of Justice Statistics (BJS), the National Institute of Justice (NIJ), and the Office for Victims of Crime (OVC).<sup>1</sup> You asked us to address

- whether projects funded through discretionary grant programs were awarded based on competition and what proportion of each bureau's funds competed each year,
- whether discretionary grant programs are systematically evaluated to determine which ones are useful and what works, and
- how structural and management issues affect the discretionary grants programs.

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**Results in Brief**

The portion of discretionary grants funds competed varies across the bureaus. While statutorily the decision to compete is left to each bureau's director, for all bureaus the policy is to compete grant awards when possible. Several factors, however, may affect a director's ability to compete certain grant funds including the following: funds earmarked by Congress or Justice for specific recipients or projects, the uniqueness of potential grant applicants, time constraints, the length of projects funded, and intra- or interagency transfers of funds. In fiscal year 1991, the most

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<sup>1</sup>Henceforth in this report BJA, BJS, NIJ, and OVC will be referred to collectively as the OJP bureaus or the bureaus.

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recent year for which figures are available, the portion of funds competed by the four bureaus we reviewed varied as follows: BJS competed 6 percent; NLJ, 84.9 percent; BJA, 43.5 percent; and OVC, 96.5 percent.

Although systematic evaluations of criminal justice anticrime and antidrug programs would provide Congress and others with information on which grants produced useful results, such evaluations generally have not been done. A 1991 Justice Inspector General (IG) report was critical of OJP bureaus for not carrying out program evaluations. Our review also found that the bureaus did not carry them out and that generally such evaluations were not statutorily required and not carried out because of a lack of funding. In the one grant program that requires evaluations to be done by NLJ, the IG report found that the evaluations were in process but not completed. We found that some evaluations have since been completed and the results published. Even in the case that required program evaluations, NLJ officials indicated further funding, independence, and planning issues that they believe undermine program evaluation efforts.

Questions about lines of authority and the autonomy of bureau directors in awarding discretionary grants have created conflicts and tensions between the bureaus and OJP. In 1991, to address the disputed lines of authority, the Attorney General issued an order conferring certain grant-related authorities traditionally held by the bureau directors on the Assistant Attorney General for OJP. Subsequently, in response to a congressional request for an opinion on the legality of the order, we issued an opinion that the Attorney General had exceeded his authority and that the order conflicted with statutory requirements.<sup>2</sup> In this review, we found that while OJP's operations are evolving, the Attorney General's order remains in place and in our opinion continues to conflict with the statutes establishing the bureaus.

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## Background

Congress has authorized federal assistance for criminal justice research and demonstration programs since 1965. Project or discretionary grants have, for more than 2 decades, been a primary funding mechanism for providing federal assistance to public and private anticrime organizations. While small compared to other programs, discretionary grant programs collectively provide the largest block of discretionary funds available to Justice for underwriting research and demonstration projects.

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<sup>2</sup>GAO (B-243175, Aug. 2, 1991).

In 1984, OJP was created to coordinate the OJP bureaus, which disseminate federal criminal justice funds. OJP includes the four previously identified bureaus, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and a variety of administrative offices. An OJP organization chart is provided in appendix I. The Assistant Attorney General for OJP heads the organization. The OJP bureaus are established in statute as semi-autonomous entities, each headed by a presidential appointee.

Each OJP bureau has a discretionary grants program. Discretionary funds are disbursed not only through grants but also through contracts or interagency agreements. These funds may also be used for administrative purposes. Funds may be awarded to individuals, public and private organizations, and other federal agencies.

For 1991, BJA had the greatest discretionary resources available at about \$63 million, followed by NIJ at almost \$30 million, BJS at about \$20 million, and OVC at approximately \$3 million. Table 1 provides specifics on the program funds of each bureau from 1987 through 1991.

**Table 1: Discretionary Grant Program Funds**

Bureau	1987	1988	1989	1990	1991
BJA <sup>a</sup>	\$54,248,822	\$22,976,783	\$34,542,590	\$55,166,174	\$63,277,021
NIJ	18,927,966	20,924,608	22,806,211	24,484,749	27,774,000
BJS	19,092,532	19,496,951	20,434,482	21,689,635	22,281,590
OVC <sup>b</sup>	3,850,094	3,816,760	3,315,921	3,855,904	3,210,374
<b>Total</b>	<b>\$96,119,414</b>	<b>\$67,215,102</b>	<b>\$81,099,204</b>	<b>\$105,196,462</b>	<b>\$116,542,985</b>

Note: Yearly figures include appropriations, carry-over funds, reimbursements, and prior year recoveries.

<sup>a</sup>Includes State and Local and Drug Discretionary Programs.

<sup>b</sup>Includes OVC's Federal and Native American Programs.

While each OJP bureau is established in the Justice Department under the general authority of the Attorney General, statutorily, the bureau directors are vested with final authority over awarding, denying, and terminating all grants, cooperative agreements, and contracts awarded for their respective bureau. Potential recipients submit grant applications to individual bureaus in response to grant announcements; successful applicants are required to use the funds for specific, predetermined purposes.

According to OJP officials, the OJP bureaus have distinct, although interrelated, missions. In addition to grants for training and technical assistance programs, BJA also funds demonstration projects, drug-control efforts, and efforts to improve state and local criminal justice systems. OVC serves as the national victims advocate and provides victims' assistance and compensation grants to the states, training and technical assistance, and emergency assistance to victims of federal crimes. BJS collects, analyzes, publishes, and disseminates statistics on crime, criminal offenders and victims, and criminal justice systems, as well as providing technical and financial support to state agencies that collect and analyze crime statistics. NIJ funds a variety of criminal justice system research studies and independently carries out research.

## Objectives, Scope, and Methodology

The objectives of this report were to determine

- whether projects funded through discretionary grant programs were awarded based on competition and what proportion of each bureau's funds competed each year,
- whether discretionary grant programs are systematically evaluated to determine which ones are useful and what works, and
- how structural and management issues affect the discretionary grants programs.

At the Subcommittee's request, we reviewed the discretionary grants programs of BJA, BJS, OVC, and NIJ. We did our work at these four bureaus and OJP.

To address the issue of competition of discretionary grants funds, we sought to identify and explain what portion of the discretionary funds was competed each year from 1987 through 1991 and factors that may affect the decision to compete those funds. To do so, we acquired and reviewed appropriate congressional, statutory, and bureau documents; interviewed OJP and bureau officials; and secured relevant OJP and bureau data.

From the OJP Comptroller's Office and Office of Planning, Management, and Budget, we obtained data on each bureau's available and obligated program funds for fiscal years 1987 through 1991. From each bureau we secured data on the proportion of funds competed for those years. We did not independently verify the data provided by OJP or the bureaus.

To address the issue of systematic program evaluations and to determine what obstacles prevented the bureaus from undertaking systematic program evaluations, we reviewed and updated the findings of the January 1991 report of the Justice IG on the lack of systematic evaluation of OJP-funded programs. We also interviewed officials at the IG's Office, OJP, and the bureaus and secured relevant agency reports.

Finally, to identify what and how structural and management issues are affecting the decisionmaking process for discretionary grant funds, we secured and reviewed relevant Justice Management Division (JMD) and IG reports; related congressional oversight and reauthorization hearings and reports; and pertinent legal documents. We also interviewed OJP and bureau officials.

After obtaining and reviewing the information, we met with agency officials to confirm our understanding of each bureau's discretionary grants program and matters related to the competition of these funds, the systematic evaluation of programs, and current issues related to structures and processes for setting priorities and awarding discretionary grants funds. At that time, we also secured additional information from the new acting head of OJP, who had been appointed after we completed our original work.

We did our work between July 1991 and September 1992 using generally accepted government auditing standards.

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## Several Factors Affect Level of Competition

The portion of discretionary grants program funds competed by BJA, BJS, NLI, and OVC varied. The policy for all four bureaus is to compete when possible. Several factors, however, may affect whether specific funds are competed including the following: earmarks, the uniqueness of potential grant applicants, time constraints, the length of projects funded, and intra- or interagency transfers of funds. The impact of these factors varies from year to year and from bureau to bureau.

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## Competition Varies Among Bureaus

BJA data show the percentage of its discretionary funds competed was approximately 50 percent in each of fiscal years 1987, 1988, and 1990; 23.6 percent in 1989; and 43.5 percent in 1991. In fiscal years 1987 and 1988, most of the remaining funds were awarded noncompetitively. Most of the funds that were not competed each fiscal year between 1989 and 1991

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were classified as continuation funds for projects which, according to BJA officials, usually had been competed in earlier years.

NJ data, which include NJ's discretionary funds and intra- and interagency transfers, show an overall competition percentage of 79.2 for the period 1987 through 1991, with 84.9 percent competed in 1991. Because most NJ grants are for 12- to 18-month periods, most NJ funds are competed yearly.

Between 1987 and 1991, only a small percentage of BJS funds were competed, because each year approximately 50 to 60 percent of BJS funds were transferred to the Census Bureau through an interagency agreement to carry out data collection and other program activities. Most of the remaining BJS funds were allocated for programs that were awarded to states. In these cases, generally only one agency in each state was eligible to receive the funding. Competitively awarded funds to nonstate entities usually totaled about 6 percent annually.

Since fiscal year 1987, according to OVC officials, the field of victims of crime has evolved, and this evolution is reflected in OVC's grant competition statistics. In 1987 and 1988, no discretionary grants were competed. Between 1989 and 1991, competition increased from 67.3 to 96.5 percent.

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### Competition Viewed as Desirable

The statutes enacting the discretionary grants programs of the bureaus we reviewed do not require the grants be competed. Final statutory authority to compete grants, contracts, and cooperative agreements is vested in the individual bureau directors for their discretionary grant programs. Beyond the statutes, we were told by bureau officials that the Office of Management and Budget (OMB), the Department of Justice, and OJP had not set down requirements on competition.

Competition was, however, viewed as desirable by OJP and bureau officials, based on the assumption that competition results in better quality uses of grant funds. OJP officials said that they stressed competition. The following are among the reasons they gave us: to break the hold of particular types of consultants over funds, to invite nontraditional groups to apply, and to "let the cream rise to the top."

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### Factors Affecting Competition

While the decision to compete discretionary funds rests with the individual bureau director, bureau officials identified several factors that

may affect the director's ability to compete funds in any given year. In addition, we found that discretionary funds transferred between OJP bureaus and other federal agencies may affect the funds available for competition. We did not attempt to determine the specific impact of these factors on specific bureaus and programs. Explanations of the factors follow.

## Earmarks

Congress and Justice may earmark or set aside discretionary grant funds. Funds may be earmarked for a specific organization or a specific program. For example, the conference report for the Department of Justice fiscal year 1991 appropriations<sup>3</sup> provided that a comprehensive gang demonstration project, such as the one developed by the City of Portland, Oregon, receive BJA funds. Congressional earmarks have also designated that discretionary funds be transferred between OJP bureaus, such as from BJA to NJ for the evaluation of BJA programs and from OJP bureaus to other federal agencies (e.g., from BJA to the Federal Bureau of Investigation for the National Crime Information Center 2000 Project).

BJA identified earmarks as a primary factor affecting the director's discretion over funds competed. According to BJA data, the portion of BJA discretionary funds earmarked has increased from about 5 percent in fiscal year 1987 to over 60 percent in fiscal year 1992.

According to officials, while earmarking funds for a particular organization precludes competition, funds earmarked for a specific purpose may still be competed, although the scope of the competition may be limited by the restrictions on the use of funds.

## Uniqueness of Potential Grant Applicants

Officials at all four bureaus we reviewed indicated that the uniqueness of the potential grant applicants or project audience affected the decision to compete funds. Although the effect of uniqueness on competition would depend on the size of the field of applicants, the examples given by bureau officials suggest that such fields are so small that competition would be very limited if not precluded.

BJA officials said that if there were a limited number of qualified applicants in a particular field who could carry out the project or one organization was uniquely qualified, BJA might not go through the competitive process. BJS officials said that statistical data may only be available from a single

<sup>3</sup>Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies for the Fiscal Year Ending September 30, 1991, and for Other Purposes. H.R. 101-909, 101st Congress, 2nd Session (1990).

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agency or a limited field of organizations or agencies and, therefore, BJS tends to go back to the same organizations.

NJ officials said that when deciding to compete funds, they considered the uniqueness of the audience to which the applicant had to direct the project. NJ officials said they would be more likely not to compete a grant to disseminate information to a particular audience rather than not compete a research grant. OVC officials said that funds were not competed when there was a uniquely qualified applicant. They suggested that such a situation is not uncommon for them because the crime victims area is a new field.

#### Time Constraints

BJA officials indicated that time constraints on a grant award were a consideration in deciding whether or not to compete funds. Specifically, officials said that if a project had to be started or completed quickly, it might not be competed. Instead, BJA would award the grant to a sole source.

#### Project Duration

According to officials, OJP bureaus vary in the length of time for which they award grants because of statutory requirements and practices. NJ grants generally run for 1 year to 18 months, with the exception of the Drug Use Forecasting System (DUF). Officials said that DUF grants are usually competed the first year and then continued without recompetition. OVC officials indicated that OVC awards grants, on the average, for 1 year but that grants may be continued without recompetition.

In contrast, according to BJA officials, BJA funds demonstration projects are generally a 2- to 3-year undertaking. BJA enabling statutes specifically allow for multiyear awards. For example, the Edward Byrne Discretionary Grants Program authorizes BJA to fund programs and projects for a period of up to 4 years and to extend funding up to an additional 2 years under specified conditions.<sup>4</sup>

BJS statistical studies, grants, and contracts also may be continued for more than 1 year because, according to BJS officials, such statistical programs have to be carried out with great consistency and extend over a protracted period to show trends.

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<sup>4</sup>Established by the Anti-Drug Abuse Act of 1988, this program provides assistance to public or private agencies and private nonprofit organizations for educational and training programs, technical assistance, multijurisdictional projects, and demonstration projects for improving the functioning of the criminal justice system, with special emphasis on drug control.

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## Intra- and Interagency Transfers

OJP bureaus may disburse and/or receive funds through intra- and interagency transfers. The transfers have several origins. Transfers may be mandated by Congress. According to officials, transfers may also result from the competitive grant application process or be used to carry out multiagency programs. Or bureau directors may decide a transfer is appropriate for the bureau to carry out its functions.

For example, to carry out its mission to collect and analyze statistical data about crime and criminal justice, BJS transfers 50 to 60 percent of its program funds to the Bureau of the Census under interagency agreements to perform data collection and other program-related activities.

Officials indicated that intra- and interagency transfers vary in their effect on competition. In some cases, the receiving bureau or agency may determine whether or not funds are competed, and in other cases, the two bureaus may exercise joint responsibility. The decision to compete funds transferred to another OJP or federal agency depends on program and other requirements.

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## Program Evaluations Were Generally Not Done

Although systematic evaluations of criminal justice anticrime and antidrug programs would provide Congress, other policymakers, and program managers with information on what programs are useful, we found that OJP bureaus generally had not carried out such evaluations.

This failure to carry out such evaluations is in part due to both a lack of statutory requirements that evaluations be done and a lack of funding. In the one program that has a statutory requirement for an independent evaluation, funding was specifically designated in only 1 year. In addition to funding constraints, bureau officials also identified problems affecting such evaluations when they are required. Because evaluations are not routinely undertaken, grant funds continue to be awarded without independent assurance that the programs are accomplishing their goals.

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## Funding Not Committed to Evaluations

Congress has expressed its need for information about which anticrime and antidrug programs are useful and work but has not required that evaluations of such programs be done. Reviews of OJP programs indicate that while individual projects have evaluation components, with the exception of the Edward Byrne Grants in BJA, OJP bureaus' discretionary grant programs generally have no overall program evaluation component.

Our findings are consistent with a 1991 Justice IG's report that was critical of the OJP bureaus for not carrying out evaluations of programs.

Generally, OJP bureau officials indicated that the lack of evaluations is due in part to the limited resources available. We found that even funding for the statutorily required NJ comprehensive evaluations of BJA programs has been uncertain.

### Edward Byrne Grant Program Required to Have Evaluations

The Anti-Drug Abuse Act of 1988 requires NJ to carry out "a reasonable number of comprehensive evaluations" of projects funded through BJA's Edward Byrne Grant funds. However, even with the evaluation requirement in the statute, NJ officials asserted that funding continued to be a problem. In fiscal year 1991, Congress directed a transfer of BJA funds to NJ for these evaluations. The conference report for the Department of Justice appropriations provided that BJA transfer not less than \$3 million to NJ for evaluations. According to NJ officials, in other years, BJA and NJ negotiated the funds transferred, resulting in \$2.7 million or less transferred. According to NJ, since 1989, NJ has awarded 22 evaluation grants for BJA discretionary grants programs. The total amount allocated for the 3-year period, from fiscal year 1989 through 1991, was \$6.95 million.

One of the questions on which the IG's report focused was whether NJ was carrying out the statutorily required evaluations of BJA's Edward Byrne Grants. The report concluded that the evaluations were begun in October 1989 and final reports were expected in 1991; therefore, no results of the evaluations had been received.

In our work that followed up the IG's report, we found that NJ was carrying out evaluations and reporting results. However, NJ officials raised concerns that the current approach to funding the Edward Byrne Grant evaluations, specifically NJ's reliance on BJA for funding, affected the certainty of funding, the planning of evaluations, and the independence of the evaluation results. According to NJ officials, NJ had to negotiate yearly with BJA over which evaluations BJA would fund and, therefore, the level of funds BJA would provide. Because, except for fiscal year 1991, Congress has not directed the transfer of funds for this purpose, the amount of funds transferred from BJA to NJ for these evaluations has been affected by BJA's available resources.

We found that BJA and NJ are now meeting the statutory requirements for reporting the results of the evaluations. The bureaus disseminate

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evaluation results for programs funded by discretionary grants primarily through two publications, NJ's Searching for Answers and the proceedings of annual joint BJA/NJ evaluation conferences.

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### Byrne Grant Evaluations Illustrate Funding Problems

The experience with the Edward Byrne Grant evaluations provides interesting insights into what is needed for an effective evaluation program. According to NJ officials, the availability of funds for the evaluations has been affected by NJ's relationships with BJA and OJP and by other congressional earmarking of BJA funds. For example, NJ officials said that in fiscal year 1992, because of extensive earmarking of its funds, BJA transferred less than \$3 million to NJ for evaluations rather than the \$5 million earmarked in the Attorney General's budget. According to NJ officials, NJ's dependence on BJA for funding of the evaluation program has affected the planning of evaluations. NJ officials would like to develop a multiyear plan, but planning the evaluations is difficult if funds are uncertain from year to year.

NJ officials further expressed concern that NJ's dependence on BJA (for funding of the evaluations) affects the independence of NJ's evaluation research by allowing BJA to direct which programs will be evaluated as it did in 1992 when it earmarked the transferred funds. NJ officials indicated that to allow NJ to carry out independent evaluations of BJA programs, NJ would like funds for its evaluations of BJA programs to be made part of NJ's funding base. Officials said that if the evaluation funds went directly to NJ, NJ could (1) freely select what it wants to compete, (2) carry out not only the mandated evaluations of BJA programs but other evaluations of criminal justice programs, (3) report not just negative and positive results but information to influence state and local operations, and (4) evaluate projects in which evaluation findings and Justice Department policies may conflict. BJA officials said that such an undertaking was a policy question and would be addressed in the budget.

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### Organizational Tension Has Affected Management of Grant Programs

According to Justice Department studies and congressional hearings, conflicts and tensions among OJP and its bureaus that are attributed to OJP's organizational structure have affected bureau operations, including discretionary grants programs. To address the authority structure in 1991, the Attorney General issued an order conferring certain grant-related authorities on the Assistant Attorney General for OJP.

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In our response to a congressional request for an opinion on the legality of the order, we held that the Attorney General had exceeded his authority over the OJP bureaus.<sup>5</sup> In the opinion, we stated that the order conflicted with statutory provisions giving the OJP bureau directors final authority over their grants and contracts.

During our review we found that OJP policies and procedures for setting grant program priorities and awarding grants from bureau discretionary funds continued to reflect the delegation of authority authorized in the Attorney General's order. In addition, questions over the legality of the Attorney General's order and tensions between OJP and bureau officials continued to affect the administration of the discretionary grants programs. When we reviewed our findings with OJP and bureau officials, the new Acting Assistant Attorney General indicated that the order remained in place but that OJP's processes and procedures were evolving.

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## OJP Structure Creates Management Conflicts

Studies by JMD and the IG have documented ongoing conflicts among OJP and its bureaus.<sup>6</sup> JMD found that lines of authority in OJP were fragmented and unclear. According to the reports, OJP's attempts to implement agencywide comprehensive planning and budget management processes generated considerable conflict and controversy with OJP bureaus.

The JMD report found that the level of coordination and communication between OJP and the bureaus had deteriorated markedly during the previous 2 years and that the current management structure was more a confederation of semi-autonomous units rather than a unified and traditional hierarchical organization. Further, the report asserted that the presidential appointee status and statutory authorities assigned to OJP bureau heads encouraged their sense of independence from the Assistant Attorney General and, at times, from the Attorney General.

The JMD report concludes that without clearly articulated Administration policies and priorities to support him, the Assistant Attorney General is subject to charges of "programmatic interference" if the Assistant Attorney General questions the program decisions of bureau heads. The report recommended that the Attorney General clarify the administrative roles

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<sup>5</sup>See GAO (B-243175).

<sup>6</sup>A Management Review of the Office of Justice Programs, Department of Justice, Justice Management Division (Washington, D.C.: Department of Justice, Nov. 1990) and Inspection Report: Office of Justice Programs, Department of Justice, Office of the Inspector General (Washington, D.C.: Department of Justice, Jan. 1991).

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and authorities of the Assistant Attorney General and establish mechanisms to support a consensus-building management approach within OJP.

The subsequent IG report highlighted serious conflicts between some of the bureaus and OJP. These conflicts were attributed to OJP efforts to increase its control over the coordination and direction of the discretionary grant programs and to change OJP's organizational structure. The IG's report stated that OJP's organizational structure, in which the Assistant Attorney General functions under the general authority of the Attorney General while the law gives the bureau heads final authority over grants awarded by their bureaus, has inherent conflicts. Whereas OJP saw the bureaus as operating too independently and without adequate coordination, some bureaus saw OJP as usurping their statutory authorities.

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## Role of Assistant Attorney General Defined

In response to the JMD and IG reports, in February 1991 the Attorney General issued Order No. 1473-91.<sup>7</sup> Based on a delegation of the Attorney General's "general authority" over the OJP bureaus, the order provided that the Assistant Attorney General for OJP would be responsible for certain matters of administration and management with respect to OJP bureaus. Further, the order provided that the Assistant Attorney General for OJP may establish binding policies and priorities for the heads of the OJP agencies with respect to the award and administration of grants, contracts, and cooperative agreements; and ensure that those grants, contracts, and cooperative agreements entered into by the bureaus were designed to accomplish their statutory purposes and conform to the policies and priorities of the Department of Justice.

To carry out the delegation of authority, the order stated that the Assistant Attorney General is to coordinate publication of program plans; solicitations for grants, contracts, and cooperative agreements; development and issuance of publications; and other programmatic activities of the OJP agencies. In addition, the Assistant Attorney General is to make final determinations concerning whether such grants, contracts, and cooperative agreements are consistent with the established policies and priorities.

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<sup>7</sup>Office of the Attorney General, Order No. 1473-91, "Delegation of Responsibilities To The Assistant Attorney General for the Office of Justice Programs," (An internal order, Feb. 19, 1991).

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If the Assistant Attorney General concludes that any such grant, contract, or cooperative agreement is not consistent with such policies and priorities, according to the order, the Assistant Attorney General may modify such action or direct compliance with the established policies and priorities.

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### GAO Finds "General Authority" Exceeded

In our 1991 opinion to Congress on the legality of the Attorney General's order, we concluded that by assigning the Assistant Attorney General the authority to establish binding policies and countermand bureau directors' decisions that are inconsistent with these policies, the Attorney General had exceeded his "general authority" over the bureau heads.

Specifically, the opinion found that the authority as delegated in the order cannot reasonably be implied from the "general authority" language. Such an expansive interpretation of the "general authority" language clearly conflicts with and would effectively nullify the current statutory provisions that specifically accord bureau heads "final authority" over contracts and grants. Finally, the entire statutory structure reflects Congress' unequivocal intent to vest policy control over the OJP grant and contract programs in the bureau heads.

Legislation, prepared by the Justice Department, was introduced in the Senate to address these issues. In effect, the legislation would have codified the delegation of authority made by the Attorney General in Order 1473-91. This legislation was not enacted by the 102nd Congress.

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### OJP Continues to Operate Under Provisions of Order

During our review, OJP and bureau officials confirmed that despite our opinion the Assistant Attorney General continued to carry out his responsibilities according to the Attorney General's order. OJP operating procedures reflected the order. The then Assistant Attorney General told us that the bureau directors report to him and that the order sent a message that bureau heads and the Assistant Attorney General had to act together.

While BJA and OVC officials told us that the order had not created problems for them, the research bureaus—NLJ and BJS—had continuing concerns with the arrangement. These concerns focused on three areas—the planning and notification process for grant solicitations, OJP authority to reject grant awards, and OJP approval authority over bureau publications. According to NLJ and BJS officials, OJP requirements compromised NLJ and

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BJS bureau independence and did not meet the needs of research organizations.

With respect to the planning and notification process, OJP officials said that the bureau directors agreed with the process of having OJP set agencywide priorities for discretionary grant programs. Research bureau officials indicated, however, that they did not like having to develop an individual plan, known as the application kit, based on the priorities for grant solicitations for their programs. According to NIJ officials, by requiring the application kit to prescribe methodologies, OJP created problems in the research community for NIJ. BJS officials indicated that the priorities did not fit BJS' program needs. Both BJS and NIJ officials believed the OJP approach made it difficult to craft a research solicitation. From OJP's perspective, the application kit has resulted in a higher quality of information and a more timely announcement of programs.

In addition, the research bureaus and OVC officials raised concerns about using the application kit to solicit grant proposals rather than the traditional announcement in the Federal Register. OVC officials said that the Federal Register reached a wider audience because it did not depend on a mailing list to identify recipients. NIJ officials said that they had received fewer proposals under the new process.

Officials at BJS and NIJ also raised concerns over the Assistant Attorney General having final grant approval authority and how this authority would affect the integrity of the agencies and the authority of the bureau directors. BJS officials were concerned that BJS not be perceived as gathering statistics to support a political agenda or manipulating numbers so that they are favorable to the government. NIJ officials were concerned as to whether the statutes provided the Assistant Attorney General with the authority to direct the bureau directors. Further, they believed the research community was not applying for grants because the community believed proposals based on OJP priorities would be preferred.

At the time of our review, the then Assistant Attorney General confirmed that he reviewed grant awards and could reject them but that in practice no grants had been rejected.

Concerns over OJP having final approval over bureau publications focused on similar issues. Statutorily, OJP has the authority to publish and disseminate information on the conditions and progress of the criminal justice system. In September 1990, the Assistant Attorney General said that

his review of publications should be more than a "rubber stamp" and instituted new procedures, requiring the bureaus to submit an early draft of documents to be published. The Assistant Attorney General would review the documents in his role as coordinator of policy between Justice and OJP.

Again, we found different views on what was the appropriate role for OJP in the publications process. OJP officials said that the Assistant Attorney General's reviews enhanced quality. BJA officials indicated that they had no difficulties with the review process and that no publications had been disapproved. In contrast, NJJ officials said publications had been delayed as a result of this process and that the process had a "chilling effect" on what could be published through the agency.

The Assistant Attorney General resigned in July 1992 and an Acting Assistant Attorney General was appointed in August. The Acting Assistant Attorney General told us that the Attorney General's order remained in place. He said, however, that OJP operations were evolving and that his management approach differed from his predecessor. He indicated that he was instituting a new quality management approach that would change OJP's processes and procedures.

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## Conclusions

The four OJP bureaus we reviewed varied widely in the percentage of their discretionary grant funds competed each year. In 1987, 1988, and 1990, BJA competed over 50 percent, in 1989 23.6 percent, and in 1991 43.5 percent. NJJ data show an overall competition percentage of 79.1 for the period 1987 through 1991. Less than 10 percent of BJS funds are available for competition. Since its inception, OVC has increased competition for grants from 0 to 96.5 percent. While each bureau's policy is to compete funds when possible, several factors influence the level of funds available for competition. According to OJP and bureau officials, these factors include earmarks, uniqueness of potential grant applicants, time constraints, project duration, and intra- or interagency agreements.

With the exception of the Edward Byrne Grants, systematic evaluations of the discretionary grants programs are not required, and are generally not funded. Consequently, much of the information that Congress has repeatedly requested to determine which antidrug or anticrime programs work is not available. Even the Byrne Grants have had funding difficulties requiring BJA and NJJ to negotiate over which evaluations would be funded.

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According to NJJ, this arrangement compromises its efforts to plan and do independent evaluations.

Reports by JMD and the Justice IG found tension and conflict between OJP and its bureaus because of OJP's structure and unclear lines of authority. In 1991, we held that an order issued by the Attorney General giving the Assistant Attorney General policymaking and countermand authority over OJP programs exceeded the authority of the Attorney General and conflicted with the statutes that established the bureaus. At the time of our review, we found that OJP continued to operate in accordance with the Attorney General's order. The research bureaus questioned the provisions of the order, believing the situation affected the operation, independence, and integrity of their discretionary grant programs. Since the appointment of a new Acting Assistant Attorney General in August, the order remains in place, but OJP operations are evolving to reflect the priorities and management style of the new Assistant Attorney General.

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## Recommendation

Unless and until Congress changes the statutory authority granted the OJP bureau directors to administer discretionary grants programs, we recommend that Congress direct the Attorney General to rescind Order 1473-91, returning the grant program authorities that the order vests in the Assistant Attorney General for OJP to the bureau directors.

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## Agency Comments

We discussed our findings with agency officials, and their views were incorporated where appropriate. OJP officials generally agreed with our findings. They indicated, however, that while the Attorney General's order remained in place and was still relevant, OJP's processes and procedures related to the discretionary grants programs were evolving.

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We plan no further distribution of this report until 30 days after the date of this letter, unless you release the report prior to that time. After 30 days, we will send copies of this report to the Attorney General, the Assistant Attorney General for OJP, and all OJP bureau directors. Copies will also be made available to others on request.

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Major contributors to this report are listed in appendix II. Please contact me at (202) 566-0026 if you have any questions concerning this report.

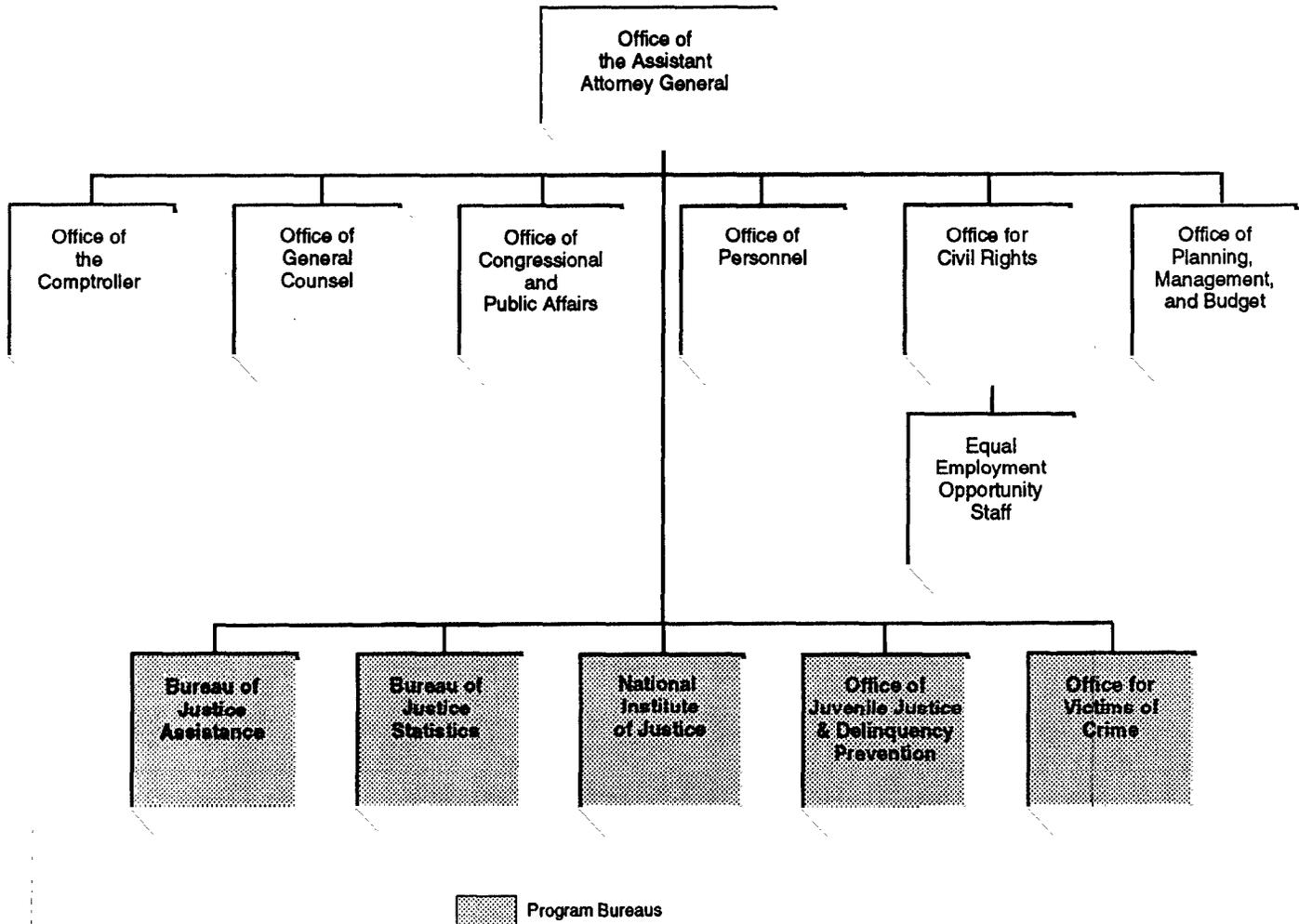
Sincerely yours,

A handwritten signature in black ink, reading "Harold A. Valentine". The signature is written in a cursive style with a large, stylized initial "H".

Harold A. Valentine  
Associate Director, Administration  
of Justice Issues



# Office of Justice Programs Organization



Source: OJP data.

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# Major Contributors to This Report

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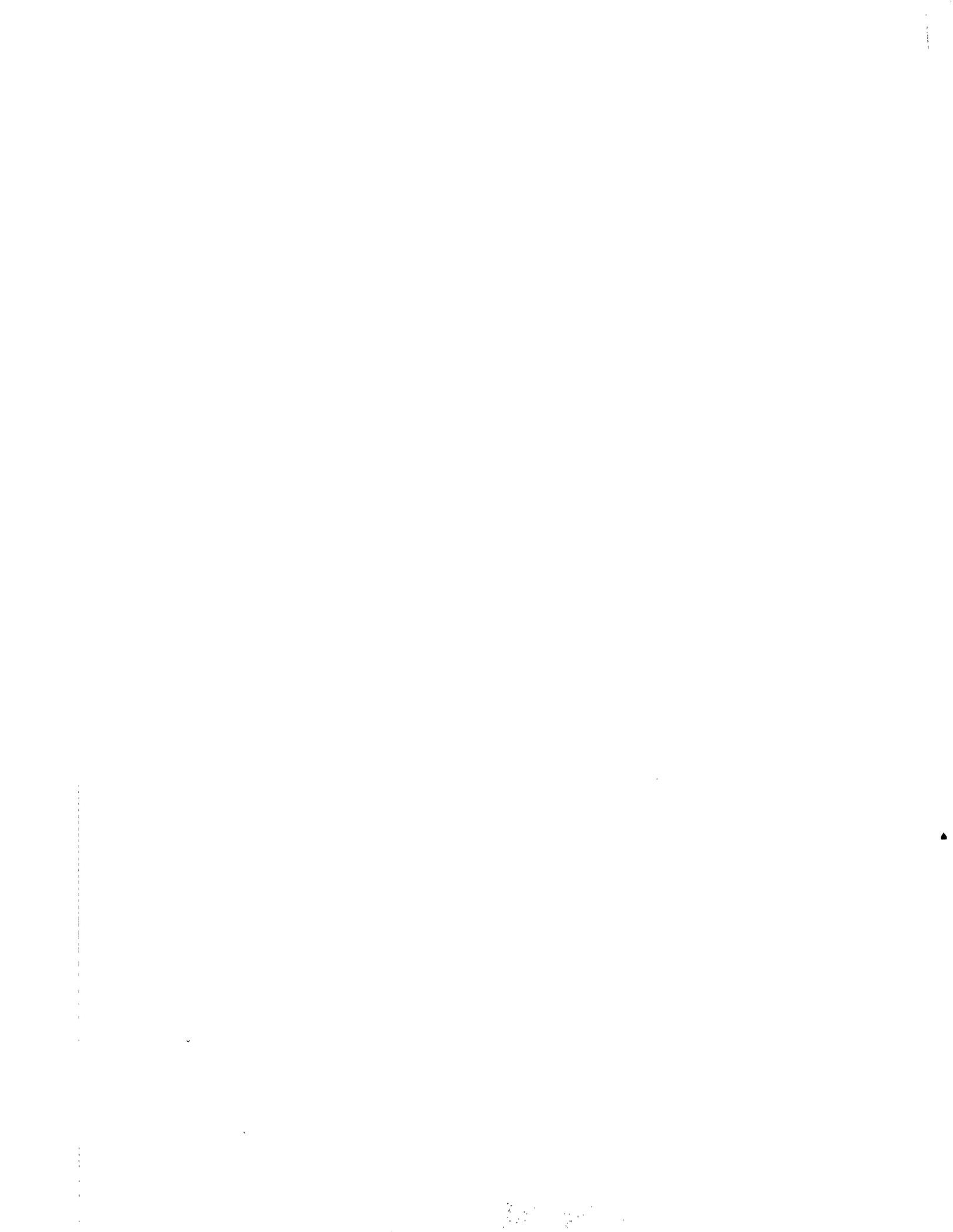
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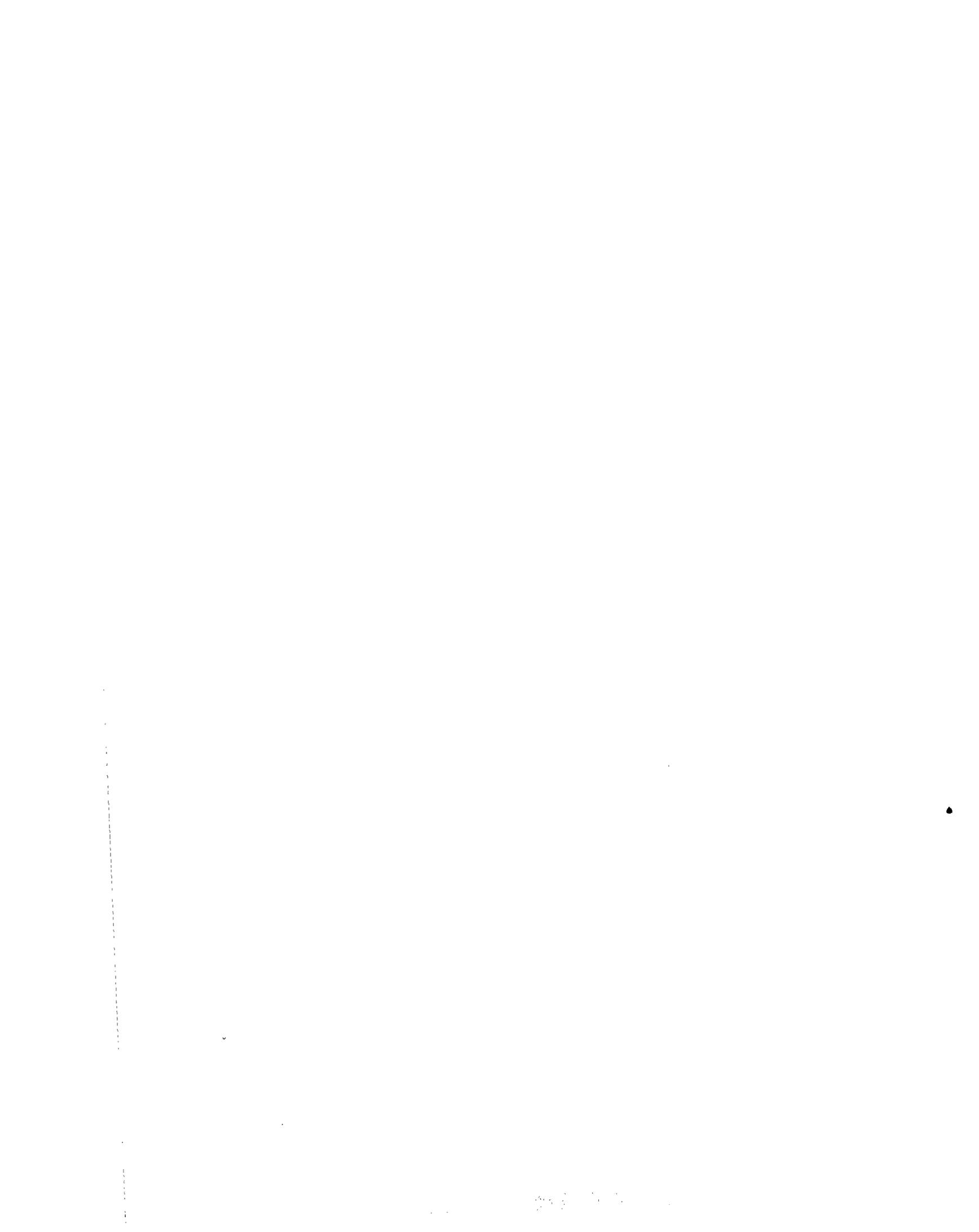
Lynda D. Willis, Assistant Director  
Barbara A. Stolz, Evaluator-in-Charge  
Michelle D. Wiggins, Secretary

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Office of the General  
Counsel, Washington,  
D.C.

Nancy Finley, Senior Attorney





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